

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNI-CON FLOORS, INC.)	
Plaintiff,)	
)	
v.)	C.A. No.: 05-10463 NG
)	
BRICKLAYERS & ALLIED CRAFTSMEN)	
UNION, LOCAL 3 – EASTERN)	
MASSACHUSETTS)	
Defendant.)	
_____)	

POST-JUDGMENT MOTION FOR APPROVAL OF
TRUSTEE PROCESS AND REQUEST FOR INJUNCTIVE RELIEF

NOW COMES Defendant Bricklayers and Allied Craftsmen Union Local 3-Eastern Massachusetts (hereinafter referred to as “Local 3”) in the above-titled matter and moves for approval of its Post-Judgment Motion for Trustee Process of accounts receivable of Plaintiff Uni-Con Floors, Inc. (hereinafter referred to as “Uni-Con”), which are currently being held by Bridgewater-Raynham Regional School District and/or Bacon Construction Co., Inc., in connection with work currently being performed by Uni-Con on the project known as the New Bridgewater-Raynham Regional High School Project, and to enjoin Trustees Bridgewater-Raynham Regional School District and Bacon Construction Co., Inc., from alienating, assigning, transferring, or encumbering any money owed to Uni-Con Floors, Inc., for work performed by Uni-Con on the new Bridgewater-Raynham Regional High School Project. As grounds for its Motion, Defendant states as follows:

1. A Judgment was entered by this Court in the above case in favor of Defendant Local 3 and against Plaintiff Uni-Con on May 9, 2006, enforcing an award from a joint Arbitration Board that ruled in favor of Defendant Local 3.
2. Bricklayers and Allied Craftsmen Local No. 3, Eastern Massachusetts, is the authorized collective bargaining representative for marble masons, tile layers, terrazzo mechanics, and marble, tile, and terrazzo finishers in eastern Massachusetts.
3. Local 3 and the Marble, Tile and Terrazzo Contractors Association of Massachusetts are parties to a collective bargaining agreement with effective dates of January 1, 2003 to July 31, 2007. Plaintiff Uni-Con is bound by the agreement by virtue of its having signed an "Independent Agreement" on March 21, 2001.
4. Article XV of the agreement includes a grievance and arbitration provision for the handling of disputes over the interpretation of the agreement before an Arbitration Board. Pursuant to Article XV, the Arbitration Board is made up of a committee of not more than six (6) individuals, consisting of three (3) members from the Union and three (3) members from the Marble, Tile and Terrazzo Contractors Association of Massachusetts. Article XV of the agreement mandates that the Arbitration Board's decisions are "final and binding on both parties."
5. On January 25, 2005, a hearing was held before the Arbitration Board. The Union presented evidence that Uni-Con violated Article I, Section 3 of the agreement by utilizing American Floor Covering, Inc., to perform certain tile

work at the University of Massachusetts-Dartmouth project, and that John Pacecho was the principal officer of American Floor Covering, Inc., and was the same individual who was the principal officer of Uni-Con Floors, Inc.

6. After considering the evidence presented, the Arbitration Board unanimously found that Uni-Con was in violation of Article I, Section 3 of the agreement, and that Uni-Con intentionally evaded the terms, requirements, and provisions of the agreement by utilizing American Floor Covering, Inc., to perform the work covered by the agreement. Pursuant to Article I, Section 3(3) of the agreement, the Arbitration Board ordered as its remedy that Uni-Con:

- (1) Immediately cease and desist the use of American Floor Covering, Inc., to perform work covered by the collective bargaining agreement on the University of Massachusetts Dartmouth project;
- (2) Pay to employees who would have been referred to the job by the Union the equivalent of wages lost by such employees as a result of the violation engaged in by Uni-Con Floors, Inc.; and
- (3) Pay into the affected joint Trust Funds established under the collective bargaining agreement any delinquent contributions to such Fund which have resulted from Uni-Con Floors, Inc.'s violation.

7. The Arbitration Board's Award, which the Court enforced in its Order for Judgment, provides that "if it is necessary for the Union and/or the Trustees of the joint Trust Funds to institute court action to enforce this Award or to successfully defend an action by Uni-Con Floors, Inc., to vacate this Award, Uni-Con Floors, Inc. shall pay any accountants' and attorneys' fees incurred by the Union and/or Fund Trustees, plus the cost of litigation, which may occur as a result of the court action."
8. On March 10, 2005, Plaintiff filed a Complaint seeking to vacate the Arbitration Board's Award.

9. On November 16, 2005, Defendant filed a Motion for Summary Judgment, seeking to have Plaintiff's Complaint to vacate the Arbitration Board's Award dismissed, and to enforce the Arbitration Board's Award.
10. On April 19, 2006, Magistrate Judge Leo T. Sorokin issued a Report and Recommendation to grant Local 3's Motion for Summary Judgment, and on May 8, 2006, United States District Court Judge Nancy Gertner issued an Order granting Local 3's Motion for Summary Judgment and thereby enforcing the Arbitration Board's Award.
11. On May 9, 2006, Judge Gertner issued a Judgment in favor of Defendant and thereby dismissed Plaintiff's action to vacate the Arbitration Board's Award.
12. Defendant served a post-judgment Request for Production of Documents upon Plaintiff Uni-Con as well on American Floor Covering, Inc., the company the Arbitration Board found Uni-Con deliberately employed to circumvent its obligations under its collective bargaining agreement with Local 3, requesting documents related to work performed by American Floor Covering, Inc., on the University of Massachusetts-Dartmouth project (hereinafter referred to as the "UMass-Dartmouth project").
13. In August 2006, Plaintiff and American Floor Covering, Inc., in response to Defendant's Request for Production of Documents, provided documentation that establishes that American Floor Covering, Inc.'s employees worked a total of 3640 hours as tile setters and tile finishers on the UMass-Dartmouth project.

14. Had Plaintiff not used American Floor Covering, Inc. to perform the tile work on the UMass-Dartmouth project to avoid having to employ members of Local 3 pursuant to the terms of its collective bargaining agreement, Local 3's members would have worked a total of 3640 hours and earned a total, in wages and fringe benefits, of \$184,463.10.
15. Defendant's attorneys' fees and costs in litigating this matter total \$7,639.90.
16. Defendant "may properly seek Trustee Process in accordance with Massachusetts State rules by Motion Post Judgment with the necessity of instituting a new action on the judgment." *Commercial Printers of Connecticut, Inc. v. Letter-Men Publishing Co.*, United States District Court, District of Massachusetts, Civil Action No. 86-3485-2WD (Collins, U.S. Magistrate, May 5, 1988).
17. Trustee Bridgewater-Raynham Regional School District has a business address of 777 Pleasant Street, Raynham, MA 02767.
18. Trustee Bacon Construction, Inc. is a corporation organized in Rhode Island with a business address of 241 Narragansett Park Drive, East Providence, RI 02916, and which is registered to conduct business in the Commonwealth of Massachusetts, and has a registered agent located in Seekonk, Massachusetts.
19. Trustee Bridgewater-Raynham Regional School District entered into a contract with General Contractor Bacon Construction, Inc., to construct a new Bridgewater-Raynham Regional High School.

20. Upon information and belief, Bacon Construction Co., Inc. entered into a subcontract with Plaintiff Uni-Con Floors, Inc., to have Uni-Con perform the masonry work on the new Bridgewater-Raynham Regional High School.
21. Uni-Con started working on the new Bridgewater-Raynham Regional High School project on or about March 27, 2006, and, upon information and belief, will continue working on the project for an additional four months.
22. Upon information and belief, Bridgewater-Raynham Regional School District and/or Bacon Construction Co., Inc., are holding funds for work performed and/or to be performed by Uni-Con on the new Bridgewater-Raynham Regional High School project in excess of the amount sought in this Trustee Process.

WHEREFORE, Defendant respectfully requests that the Court grant its Motion for Approval of Post-Judgment Trustee Process to attach any funds currently being held by Trustees Bridgewater-Raynham Regional School District and Bacon Construction Co., Inc. for work performed and/or to be performed by Plaintiff Uni-Con Floors on the new Bridgewater-Raynham Regional High School Project, and enjoin Trustees Bridgewater-Raynham Regional School District and Bacon Construction Co., Inc., from alienating, assigning, transferring, or encumbering any money owed to Uni-Con Floors, Inc., for work performed on the new Bridgewater-Raynham Regional High School Project, in the amount of \$192,103.00 or until Plaintiff's debt to Defendant is satisfied.

Respectfully submitted,

For Defendant Bricklayers and
Allied Craftsmen Local 3
Eastern Massachusetts

By its Attorney

/s/ Jonathan M. Conti

Jonathan M. Conti, BBO#657163
Feinberg, Campbell & Zack, P.C.
177 Milk Street
Boston, MA 02109
(617) 338-1976

Dated this 29th day of August, 2006.

Certificate of Service

I, Jonathan M. Conti, counsel for Defendant Bricklayers and Allied Craftsmen Local No. 3, Eastern Massachusetts, hereby certify that on this date I served a copy of the within document by first class mail, postage prepaid, to David M. Fleury, Esq., Carmichael & Zajac, P.C. 170 High Street, Taunton, MA 02780.

Dated this 29th day of August, 2006.

/s/ Jonathan M. Conti

Jonathan M. Conti

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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BRICKLAYERS & ALLIED CRAFTSMEN)	
UNION, LOCAL 3 – EASTERN)	
MASSACHUSETTS)	
Defendant.)	
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SUMMONS TO TRUSTEE

To the Trustee: **George Agostini, President/Registered Agent**
 Bacon Construction Co., Inc.
 241 Sykes Road
 Seekonk, MA 02771

You are hereby summoned and required to file, within twenty (20) days after service of this Summons upon you, exclusive of the day of service, a disclosure under oath of what goods, effects, monies, or credits, if any, of Plaintiff Uni-Con Floors, Inc., are in your hands or possession at the time of the service of this summons upon you which may be taken on execution as the Defendant Bricklayers and Allied Craftsmen Local 3- Eastern Massachusetts, whose attorney is Jonathan M. Conti, Esq., of Feinberg, Campbell & Zack, P.C., may recover pursuant to a Judgment entered against said Plaintiff Uni-Con Floors, Inc., in the United States District Court for the District of Massachusetts. If you do not do so, judgment by default will be taken against you and you will be adjudged Trustee as alleged.

Upon information and belief, Plaintiff Uni-Con Floors, Inc., is owed funds from Bacon Construction Co., Inc., and/or Bridgewater-Raynham Regional School District for the work it has completed since on or about March 27, 2006, and/or which shall be completed over the next several months on the new Bridgewater-Raynham Regional High School Project.

PROOF OF SERVICE ON TRUSTEE

I hereby certify and return that on _____, I served a copy of the within summons upon the named Trustee, in the following manner:

(Signature)

(Name and title)

(Address)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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BRICKLAYERS & ALLIED CRAFTSMEN)	
UNION, LOCAL 3 – EASTERN)	
MASSACHUSETTS)	
Defendant.)	
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SUMMONS TO TRUSTEE

To the Trustee: **Superintendent Dr. Robert O. McIntyre**
 Bridgewater-Raynham Regional School District
 777 Pleasant Street
 Raynham, MA 02767

You are hereby summoned and required to file, within twenty (20) days after service of this Summons upon you, exclusive of the day of service, a disclosure under oath of what goods, effects, monies, or credits, if any, of Plaintiff Uni-Con Floors, Inc., are in your hands or possession at the time of the service of this summons upon you which may be taken on execution as the Defendant Bricklayers and Allied Craftsmen Local 3- Eastern Massachusetts, whose attorney is Jonathan M. Conti, Esq., of Feinberg, Campbell & Zack, P.C., may recover pursuant to a Judgment entered against said Plaintiff Uni-Con Floors, Inc., in the United States District Court for the District of Massachusetts. If you do not do so, judgment by default will be taken against you and you will be adjudged Trustee as alleged.

Upon information and belief, Plaintiff Uni-Con Floors, Inc., is owed funds from Bridgewater-Raynham Regional School District and/or Bacon Construction Co., Inc., for the work it has completed since on or about March 27, 2006, and/or which shall be completed over the next several months on the new Bridgewater-Raynham Regional High School Project.

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**ORDER OF APPROVAL OF
ATTACHMENT ON TRUSTEE PROCESS**

This case came on to be heard upon a Motion for an Order of Approval of Attachment on Trustee Process and upon consideration thereof, of a Judgment having been entered against Plaintiff in the United States District Court for the District of Massachusetts on May 9, 2006, and such amount of the Judgment being over and above any liability insurance known or reasonably believed to be available.

WHEREUPON, the Court hereby approves attachment of Trustee Process in the amount of \$192,103.00, subject to all applicable exemptions and limitations provided by law.

U.S. District Court Judge

Date